

ILLINOIS
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**PREPARED SUPPLEMENTAL TESTIMONY
OF
WILLIAM G. LIVINGSTONE
ON BEHALF OF
CENTRAL ILLINOIS LIGHT COMPANY
DOCKET NO. 00-0579**

1 Q1: Please state your name and business address.

2 A1: My name is William G. Livingstone and my business address is 300 Liberty Street, Peoria,
3 Illinois 61602.

4 Q2: Are you the same William G. Livingstone who previously submitted prepared direct
5 testimony in this docket?

6 A2: Yes, I am.

7 Q3: What is the purpose of your supplemental testimony?

8 A3: On January 29, 2001, the Hearing Examiner in the above-numbered docket directed CILCO
9 to file additional exhibits calculating the cost of fuel and purchased power during the
10 projected test period under alternative scenarios. The first scenario is to include an
11 assumption that Central Illinois Light Company (CILCO) will cease purchasing coal from
12 Freeman United Coal Company's Crown II mine as of March 24, 2001. Another scenario
13 is to determine the cost of coal from the Crown II mine during the year 2000 with the
14 "quarterly adjustment" shown on page 7 of CILCO Exhibit 7.1 included, and with the
15 quarterly adjustment excluded. In addition, all the scenarios are to include in the FAC the
16 cost of all power and energy purchased by CILCO during the test period, with the cost of fuel
17 used in CILCO's generating plants and the cost of purchased power and energy being
18 averaged to determine the cost of each kilowatt-hour used to make regulated retail sales and

19 each kilowatt-hour used to make unregulated retail sales under competitive contracts. I have
20 prepared an exhibit in response to the Hearing Examiner's direction. The document is
21 marked CILCO Supplemental Exhibit 10.1. The exhibit contains projected information,
22 which is confidential, and the exhibit is marked accordingly.

23 Q4: What was the first step in preparing the exhibit?

24 A4: The first step was to prepare a base case, which could then be adjusted to incorporate the
25 assumptions as directed by the Hearing Examiner. The base case consists of CILCO's
26 original filing, except that I adjusted the cost of futures contracts to remove the five year
27 average which was opposed by Staff, CUB and IIEC. The Hearing Examiner did not direct
28 that this adjustment be made, but I made it to conform with the position of the other parties.
29 This adjustment is identical to what was done by CILCO witness Ferlmann in CILCO
30 Surrebuttal Exhibit 8.1, and described at page 3 of his surrebuttal testimony. It includes the
31 entire 100 Mw of power and energy purchased from CIPS at an on-peak price of \$24 per
32 Mwh, and does not include a five-year average of futures prices. The effect of these
33 adjustments was to reduce the cost of purchased power and energy during the projected test
34 period.

35 Q5: What was the next step you took to prepare the exhibit?

36 A5: Because all scenarios are to include all purchased power and energy in the FAC, I included
37 all purchased power and energy in the base case in accordance with the requirements of
38 Docket No. 99-0468.

39 Q6: How did you determine and incorporate the cost of purchased power and energy in
40 accordance with Docket No. 99-0468?

41 A6: As directed by the Hearing Examiner, the starting point was the original filing made by
42 CILCO in this proceeding, which I first adjusted to remove the five-year average of
43 purchased power as I described above. The costs of purchased power necessary to serve
44 regulated native load sales during the months of July 2000 through September 2001 were
45 determined using the prices for futures contracts as of June 24, 2000. The original filing did
46 not include purchases made to make unregulated retail sales under competitive contracts, but
47 these purchases must be included in the FAC under the decision in Docket No. 99-0468.
48 Therefore, the next step involved the addition to the base case of the "short" position in
49 unregulated retail sales to the "other megawatts" on the original spreadsheet. This addition
50 represents the purchases of megawatts that CILCO will have to make to meet its obligations
51 for unregulated retail sales for which CILCO has not already purchased power under fixed-
52 price contracts. These additional megawatts were included in the FAC at the costs calculated
53 on the CINERGY Index in the manner described above and are significantly less than the
54 megawatts already contracted for to meet new retail obligations.

55 Q7: How did you incorporate the costs of purchased power and energy to meet CILCO's
56 remaining obligations for unregulated retail sales?

57 A7: In the area on the original spreadsheet that included the cost of purchased power and energy,
58 I added new lines to show the cost of the energy already under contract to meet the
59 requirements of the remaining unregulated retail sales. These costs are taken directly from
60 contracts currently in place to serve unregulated retail load. The costs are not projections;
61 they are actual amounts from the fixed-price contracts.

62 Q8: How did you determine the amount of purchased power and energy needed to meet CILCO's

63 sales obligations?

64 A8: The regulated retail sales and the unregulated retail sales were determined using the most
65 recent forecasts of energy usage at the time of CILCO's filing. For months of the projected
66 period that are now historical months, the projections were not changed to show actual usage.

67 Q9: Were any changes made in the projections of energy generated in CILCO's plants?

68 A9: No. The original generation forecast is still valid. It reflects the expected level of generation
69 whether or not the cost of purchases to serve unregulated load is included in the FAC. It was
70 not necessary to make any subtractions from the cost calculation, because interchange sales
71 and their related costs are excluded from the spread sheet, just as they were with the original
72 spread sheet prepared for this proceeding. The costs of all retail sales, regulated and
73 unregulated, are at the average cost per kilowatt-hour, so that no further adjustment is
74 necessary to reflect the costs of energy used to serve regulated retail load.

75 Q10: Are the allocations of purchased power and energy between regulated and unregulated sales
76 calculated in the same manner as those included in the late-filed exhibit ordered by the
77 Hearing Examiner in Docket No. 99-0468?

78 A10: Yes, they are. Docket No. 99-0468 requires that the average of the cost of fuel for generation
79 and the cost of purchased power be used to price both regulated and unregulated retail sales.

80 Q11: Do the costs of purchased power shown in the Supplemental Exhibit 10.1 include any
81 demand charges related to the reservation of generating capacity?

82 A11: No. Charges for generating capacity may be recovered through the FAC only when they
83 relate to the purchase of economy energy. The purchased power and energy forecast by
84 CILCO does not include economy energy.

85 Q12: What was the next step in preparing the exhibit?

86 A12: I recalculated the cost of fuel used for generation by assuming that CILCO received no coal
87 from the Crown II mine after March of 2001, and that CILCO purchased coal from the Turriss
88 mine at \$21.50 per ton in place of the Crown II coal. This is the price of Turriss coal shown
89 in response to Staff Data Request ENG 5. For purposes of the exhibit, I have assumed that
90 the price of the Turriss coal would be immediately reflected in CILCO's FAC, beginning
91 April 1, 2001.

92 Q13: Why did you use Turriss coal to replace coal from the Crown II mine?

93 A13: Turriss coal is likely to be available, Turriss is an Illinois mine, the quality of the coal is
94 essentially the same as that of Crown II coal, and the price of Turriss coal is the lowest
95 reasonably available for the Duck Creek Station. Turriss coal is also the coal that Staff
96 witness Larson assumed in his testimony that CILCO would purchase as a substitute for
97 Crown II coal.

98 Q14: In your opinion, is it reasonable to assume at this point in time that the Turriss coal can be
99 used to replace the Crown II coal without incurring any off-setting expense?

100 A14: No, it is not. In December of 2000, CILCO gave notice to Freeman that CILCO would cease
101 taking coal from the Crown II mine if Freeman did not cure its breaches of the coal purchase
102 contract. About January 24, 2001, Freeman publicly announced that it would have to close
103 the Crown II mine if CILCO persisted in its position. Freeman also stated publicly,
104 according to the newspaper stories I read, that it would use every legal resource available to
105 it to resist CILCO's decision. Under these circumstances, even if the Commission were not
106 legally precluded from assuming that CILCO will be successful in its litigation with

Freeman, it would be unreasonable to conclude that CILCO will be able simply to walk away from the Freeman contract and begin purchasing at market prices at the end of March, and certainly not without incurring substantial expenses.

Q15: Please explain.

A15: CILCO's notice to Freeman stated that CILCO will cease taking deliveries from the Crown II mine if Freeman does not cure its breaches. As of this writing, Freeman still has approximately eight weeks to cure its breaches. If that happens, the mine would not close, and CILCO would continue to purchase coal from the Crown II mine, at a price as yet undetermined. On the other hand, if Freeman elects to close the mine rather than cure its breaches, CILCO will likely face years of litigation with respect to claims by Freeman to recover damages. If Freeman is successful in the litigation, CILCO could end up paying more, not less, for coal than CILCO is currently paying for Crown II coal. This is undoubtedly one of the reasons the Commission is barred from assuming that CILCO will be successful in any litigation it undertakes. Further, if the Commission were to assume, for purposes of calculating CILCO's FAC costs after March of 2001 that CILCO will be totally successful and will owe Freeman nothing for coal not taken or for other damages after that date, the Commission would effectively preclude CILCO from negotiating a settlement with Freeman that results in anything less than total success. It is unreasonable to assume that any settlement could be made that will equal the Commission's assumption. At the same time, CILCO could not accept any settlement less than that, because CILCO would lose every dollar it had to pay in excess of the prices assumed by the Commission, even though the settlement might be highly beneficial otherwise. In addition, the calculation mandated by

the Hearing Examiner includes nothing for attorneys' fees incurred by CILCO to litigate the dispute with Freeman. I have been told by counsel that the fees and expenses could run into the millions over three or four years of litigation.

Q16: Why do you assume that the litigation with respect to the contract with Freeman could last for years?

A16: In the fall of 1997, CILCO initiated an arbitration proceeding against Freeman in accordance with the provisions of the coal purchase agreement. A decision by the arbitration panel was not issued until August of 2000, and the case is still pending in the Circuit Court.

Q17: Why did you state that you "assumed" that the reduced price of Turris coal will be immediately reflected in the cost of fuel included in the FAC?

A17: CILCO currently has approximately 200,000 tons of Crown II coal at the Duck Creek plant. It is not certain how much more coal will be received from Crown II before March 24, 2001, nor is there any certainty what the price of that coal will be. It is also uncertain when CILCO would be able to initiate deliveries of Turris coal once it is certain that the Crown II mine will close. These uncertainties make it impossible to calculate the actual cost of the fuel that would be used at Duck Creek after March 24, 2001. Therefore, for simplicity, I assumed that Turris coal would be the only coal burned after April 1, 2001.

Q18: What is the likely effect on the FAC costs of purchasing Turris coal after March 24, 2001?

A18: Realistically, there will be tens of thousands of tons of Crown II coal at Duck Creek at the end of March. Any new coal received at market prices will be blended into the existing cost of the coal inventory, so that the cost of Crown II coal will remain in the inventory and affect the cost of fuel burned at Duck Creek for the indefinite future. The lower market prices of

151 substitute coal will not be fully experienced through the FAC for years. At the outset, until
152 the market-priced coal becomes a major part of the inventory, the Crown II coal will receive
153 the heaviest weighting in the inventory costs included in fuel burned. In short, the
154 assumption to include the full effect of market-priced coal at Duck Creek as of April 1, 2001,
155 substantially understates the actual fuel prices that will be incurred during the test period.
156 The change in coal supply will have little effect on the cost of fuel burned during the test
157 period.

158 Q19: In stating that the Commission is barred from assuming that CILCO will be successful in
159 litigating the disputes with Freeman, are you offering a legal opinion?

160 A19: No. I am simply taking at face value what the Commission itself said in *Central Illinois*
161 *Light Company*, Docket No. 80-0157 (Jan. 1981). In that case, Staff proposed to deduct from
162 CILCO's operating expenses in a rate case an amount equal to contested real estate taxes.
163 Staff proposed that the case be monitored, and that if CILCO lost the case prior to the
164 conclusion of the rate case, the adjustment could be reversed. The Commission rejected
165 Staff's proposal, citing *Peoples Gas Company v. Slattery*, 373 Ill. 31 (1940), where the
166 Illinois Supreme Court had said that "it is an unreasonable action upon the part of the
167 commission to arbitrarily assume, in advance of hearing, either that the utility should litigate
168 its taxes, or that it will be successful if it does so." Applying the same reasoning here, there
169 is no basis for assuming that CILCO will be successful in its litigation with Freeman.

170 Q20: What is the next step you took to prepare the exhibit?

171 A20: I calculated the cost of coal during the period from July 1999 through December 2000 by
172 removing from Freeman's calculations on page 7 of CILCO Exhibit 7.1, the quarterly

173 adjustment for the third quarter of the year and for the fourth quarter of the year. This
174 resulted in an increase in the price of Freeman coal during the third quarter, and a decrease
175 in the fourth quarter.

176 Q21: Did you include these two adjustments in alternative calculations?

177 A21: Yes. The exhibit includes one calculation in which both Freeman adjustments, that is the
178 adjustments for 2000 and for 2001, are included, one calculation in which only the 2000
179 adjustments are included, and one calculation in which only the 2001 adjustments are
180 included. Each calculation includes all four test periods within the 15-month forecast period.

181 Q22: What are the results of including all the adjustments in the base case calculation?

182 A22: The average FAC costs per Kwh for the twelve months ending June 30, 2001 are \$0.02115,
183 for the twelve months ending July 31, 2001 are \$0.02098, for the twelve months ending
184 August 31, 2001 are \$0.02094, and for the twelve months ending September 30, 2001 are
185 \$0.02078.

186 Q23: Does this complete your prepared supplemental testimony?

187 A23: Yes, it does.